

07-cr-2012

**United States District Court**  
**Northern District of Illinois - CM/ECF LIVE, Ver 3.0 (Chicago)**  
**CRIMINAL DOCKET FOR CASE #: 1:07-cr-00318 All Defendants**  
**Internal Use Only**

Case title: USA v. Downing

Date Filed: 05/19/2007

Date Terminated: 05/30/2007

Assigned to: Honorable Martin C.  
Ashman

REC'D JUN 25 2007

**Defendant****David Anthony Downing (1)**

TERMINATED: 05/30/2007

represented by **Todd S. Pugh**

Thomas M. Breen and Associates

53 West Jackson Boulevard

Suite 1460

Chicago, IL 60604

(312) 360-1001

Email: [tpugh@defend-chicago.com](mailto:tpugh@defend-chicago.com)**LEAD ATTORNEY****ATTORNEY TO BE NOTICED****Pending Counts**

None

**Disposition**

A TRUE COPY - ATTEST  
MICHAEL W. DOBBINS, CLERK  
BY  
DEPUTY CLERK  
U.S. DISTRICT COURT, NORTHERN  
DISTRICT OF ILLINOIS

Disposition: 6-8-2007

**Highest Offense Level (Opening)**

None

**Terminated Counts**

None

**Highest Offense Level (Terminated)**

None

**Complaints**18:371.F--conspiracy to defraud the  
United States**Disposition**

**Plaintiff****USA**represented by **AUSA**

United States Attorney's Office (NDIL)

219 South Dearborn Street

Suite 500

Chicago, IL 60604

(312) 353-5300

Email: [USAILN.ECFAUSA@usdoj.gov](mailto:USAILN.ECFAUSA@usdoj.gov)**ATTORNEY TO BE NOTICED****Pretrial Services**

435-5545

Email:

[ilnptdb\\_Court\\_Action\\_Notice@ilnpt.uscourts.gov](mailto:ilnptdb_Court_Action_Notice@ilnpt.uscourts.gov)**ATTORNEY TO BE NOTICED****Benjamin F Langner**

United States Attorney's Office (NDIL)

219 South Dearborn Street

Suite 500

Chicago, IL 60604

(312) 353-2817

Email: [benjamin.langner@usdoj.gov](mailto:benjamin.langner@usdoj.gov)**ATTORNEY TO BE NOTICED**

Date Filed	#	Docket Text
05/19/2007	<u>1</u>	Rule 5(c)(3) waiver signed by Judge Martin C. Ashman as to David Anthony Downing (yap, ) (Entered: 05/22/2007)
05/19/2007	<u>2</u>	ARREST of defendant David Anthony Downing (yap, ) (Entered: 05/22/2007)
05/19/2007	<u>3</u>	MINUTE entry before Judge Martin C. Ashman as to David Anthony Downing: Removal proceedings held. Defendant appears in response to arrest on 5/19/07. Defendant informed of his rights. Status hearing set for 5/21/2007 at 03:30 PM. Mailed notice (yap, ) (Entered: 05/22/2007)
05/21/2007	<u>4</u>	MINUTE entry before Judge Martin C. Ashman as to David Anthony Downing: Status hearing held. Identity hearing, preliminary examination hearing and detention hearing set for 5/30/07 at 3:30 p.m. Mailed notice (yap, ) (Entered: 05/22/2007)
05/24/2007	<u>5</u>	ATTORNEY Appearance for defendant David Anthony Downing by Todd S. Pugh (Pugh, Todd) (Entered: 05/24/2007)
05/30/2007	<u>6</u>	MINUTE entry before Judge Martin C. Ashman as to David Anthony Downing: Case called for identity hearing, preliminary examination

		hearing and detention hearing. Defendant waives identity hearing. Defendant waives his right to preliminary examination without prejudice. Defendant waives his right to a detention hearing without prejudice. Order defendant detained pending further court proceedings without prejudice. Order defendant removed to the United States District Court for the Northern District of Iowa in custody. (Terminated defendant David Anthony Downing). Mailed notice (yap, ) (Entered: 05/30/2007)
06/08/2007	●	CERTIFIED and Transmitted to Northern District Court of Iowa, the complete record as to David Anthony Downing consisting of transmittal letter, original pleadings, and certified copy of docket entries by certified mail no. #7006 0100 0001 7312 0903. (yap, ) (Entered: 06/08/2007)

DOCKETED  
MAY 22 2007

UNITED STATES DISTRICT COURT

FOR THE

MAY 19 2007

NE

NORTHERN DISTRICT OF ILLINOIS - EASTERN DIVISION

CLERK, U.S. DISTRICT COURT

REC'D JUN 25 2007

AFFIDAVIT OF COMPLAINT (OR INDICTMENT) IN REMOVAL PROCEEDINGS

UNITED STATES OF AMERICA

v.

DAVID ANTHONY DOWNING

NORTHERN DISTRICT OF ILLINOIS

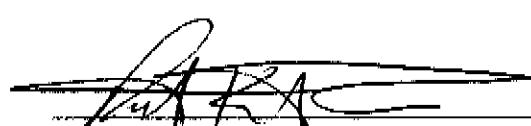
MAGISTRATE JUDGE ASHMAN

07CR 0318

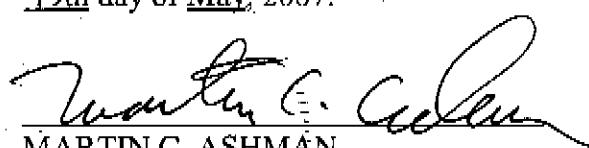
CASE NUMBER:

The undersigned Affiant personally appeared before MARTIN C. ASHMAN, a United States Magistrate Judge, and being duly sworn on oath, states: That at the NORTHERN DISTRICT OF IOWA, one DAVID ANTHONY DOWNING, was charged in a Complaint (Case No. 07 MJ 119 JSS) with violations of Sections 841, 846, 960, and 963 of the United States Code, Title 21, and violations of Sections 371 and 545 of the United States Code, Title 18, and that on the basis of Affiant's investigation and information received concerning the case through official channels, does hereby certify that a Warrant for Arrest is outstanding for the arrest of said defendant (*see* Exhibit A - Warrant for Arrest and Complaint).

Wherefore, Affiant prays that the defendant be dealt with according to law.

  
Robert K. Frounfelker  
Special Agent  
U.S. Immigration and Customs Enforcement

Subscribed and Sworn to before me this  
19th day of May, 2007.

  
MARTIN C. ASHMAN  
United States Magistrate Judge

AUSA Benjamin F. Langner

Bond set [or recommended] by issuing Court at \_\_\_\_\_

Case 6:07-cr-02012-MWB-LTS Document 23 Filed 06/26/07 Page 4 of 16

SAO 442 (Rev. 10/03) Warrant for Arrest

## UNITED STATES DISTRICT COURT

Northern District of Iowa

UNITED STATES OF AMERICA  
v.

David Anthony Downing

## WARRANT FOR ARREST

Case Number:

REC'D JUN 25 2007

To: The United States Marshal  
and any Authorized United States Officer

YOU ARE HEREBY COMMANDED to arrest

David Anthony Downing

Name

and bring him or her forthwith to the nearest magistrate judge to answer a(n)

Indictment    Information    Complaint    Order of court    Probation Violation Petition    Supervised Release Violation Petition    Violation Notice

charging him or her with (brief description of offense)

knowingly and unlawfully combine, conspire, confederate, and agree with other persons both known and unknown to 1) willfully and knowingly and with intent to defraud the United States, smuggle and clandestinely introduce into the United States merchandise which should have been invoiced, that is, marijuana; 2) import 100 kilograms or more of marijuana, a schedule I controlled substance into the United States; and 3) distribute and possess with intent to 100 kilograms or more of marijuana, a schedule I controlled substance.

in violation of Title 18/21

United States Code, Section(s) 371/545/963/950/845/841

Jane F. Spande

Name of Issuing Officer

Iowa District Associate Judge  
Sixth Judicial District

Title of Issuing Officer

Signature of Issuing Officer

Cedar Rapids, Iowa, 18 May 07

Date and Location

## RETURN

This warrant was received and executed with the arrest of the above-named defendant at

DATE RECEIVED	NAME AND TITLE OF ARRESTING OFFICER	SIGNATURE OF ARRESTING OFFICER
DATE OF ARREST		

OAG91 (Rev. 12/03) Criminal Complaint

## UNITED STATES DISTRICT COURT

Northern DISTRICT OF Iowa

UNITED STATES OF AMERICA  
v.David Anthony Downing,  
Daniel Francis Berger &  
Azar Berend Niekamp

## CRIMINAL COMPLAINT

Case Number:

(Name and Address of Defendant)

I, the undersigned complainant state that the following is true and correct to the best of my knowledge and belief. On or about April-May 2007 in Delaware County, in the Northern District of <sup>(Date)</sup> Iowa and elsewhere defendant(s) did,

(State Statutory Language of Offense)  
knowingly and unlawfully combine, conspire, confederate, and agree with other persons both known and unknown to: 1) wilfully and knowingly and with intent to defraud the United States, smuggle and clandestinely introduce into the United States merchandise which should have been imported, that is, marijuana; 2) import 100 kilograms or more of marijuana, a schedule I controlled substance into the United States; and 3) distribute and possess with intent to 100 kilograms or more of marijuana, a schedule I controlled substance.

in violation of Title 18/21 United States Code, Section(s) 371/545/983/960/846/841.  
I further state that I am a(n) ICE Resident Agent in Charge and that this complaint is based on the following facts:

See Attached Affidavit

Continued on the attached sheet and made a part of this complaint:

Yes  No



Signature of Complainant

Michael T. Vail

Printed Name of Complainant

Sworn to before me and signed in my presence,

18 May 2007  
Date

Jane F Spande

Name of Judge Title of Judge  
Iowa District Associate Judge  
Sixth Judicial District

at Cedar Rapids Iowa  
City State

  
Signature of Judge

RECD JUN 25 2007  
2007

STATE OF IOWA )  
) 55  
COUNTY OF LINN )

## AFFIDAVIT

I, Michael Vall, being duly sworn, depose and state:

1. I am the Resident Agent in Charge of the Cedar Rapids, Iowa, Department of Homeland Security, United States Immigration and Customs Enforcement ("ICE") office. As such, I am an "Investigative or law enforcement officer" investigating criminal violations of the federal immigration and narcotics laws, including, but not limited to 21 U.S.C. §§ 841, 843, 846, and 848 and 18 U.S.C. §§ 545, 1952 and 371. I have received specialized training in the enforcement of laws concerning controlled substances as found in Title 18 and 21 of the United States Code. I have been the Resident Agent in Charge of the Cedar Rapids, Iowa ICE office since March 2003. Prior the establishment of the ICE office, I was a Special Agent with the Immigration and Naturalization Service for 16 years. From 1997 until 2002, I was assigned to the regional electronic surveillance unit which investigated human trafficking, harboring, narcotics offenses and related activity. My official ICE duties include investigating criminal violations of the federal narcotics laws, including, but not limited to, Title 21, United States Code, Sections 841, 843, 846 and 848 and 18 U.S.C. §§ 545, 1952 and 371.

2. I am aware of the information set forth in this affidavit through investigation conducted personally as well as investigation conducted by other Officers and Agents of the Department of Homeland Security, Drug Enforcement Administration (DEA), Iowa Division of Narcotics Enforcement (DNE) and other law enforcement officers.

3. This application is made in support of a criminal complaint charging DAVID ANTHONY DOWNING, DANIEL FRANCIS BERGER and AZAR BEREND NIEKAMP with

conspiracy to smuggle goods into the United States in violation of Title 18, United States Code, Sections 371 and 545; conspiracy to import controlled substances, in violation of Title 21, United States Code, Sections 960 and 963 and conspiracy to distribute and possess with intent to distribute a controlled substance, in violation of Title 21, United States Code, Sections 841 and 846.

4. On or about May 14, 2007, at about 10:00 p.m., a 2007 Kenworth tractor bearing Manitoba, Canada license PBK023 carrying a shipping container bearing container identification number NYKU7970377 was presented for inspection at the United States Port of Entry located near Pembina, North Dakota. The driver of the tractor claimed that the shipping container was empty.

5. Upon inspection of the shipping container bearing container identification number NYKU7970377, Customs and Border Protection (CBP) Officers found that there was 600 pounds of marijuana, a Schedule-I controlled substance, hidden within the walls of the container. This marijuana appeared to be the high grade hydroponically grown marijuana known as "B.C. Bud." The packages of the marijuana were marked with blue, yellow or green-colored paint.

6. After finding the marijuana, CBP Officers contacted agents from Immigration and Customs Enforcement, who responded to the port of entry and conducted an investigation related to the seized narcotics. Approximately 300 pounds of the marijuana was returned to the walls of the container to be delivered in a controlled delivery to the intended recipient in Iowa.

7. Through subsequent investigation, ICE agents determined that the driver of the seized vehicle and the company employing the driver, Spirit Road Express, were not

aware that there was marijuana secreted in the walls of the shipping container. The driver informed ICE agents that the shipping container was to be delivered to a person identified as "Jim" at 2193 220<sup>th</sup> Street, Manchester, Iowa.

8. The driver of the seized vehicle agreed to cooperate with law enforcement and deliver the shipping container to the intended recipient. After making calls to the dispatcher, the driver was directed to leave the trailer in the parking lot of a truck stop in Delaware, Iowa, for "Jim" to pick up. The driver proceeded to the parking lot, unhooked the trailer housing the shipping container, and left it in the parking lot.

9. On May 16, 2007, at approximately 3:40 p.m., a semi tractor arrived at the truck stop and hooked up to the trailer. The trailer was transported to a metal building located on a lot approximately one-quarter mile outside of Delaware, Iowa. The semi pulled the trailer into the metal building, unhooked it, and left.

10. At approximately 4:00 p.m. that day, ICE agents and Iowa state agents entered the property pursuant to an anticipatory search warrant, and secured the area. Three individuals were located on the property, including the individual using the name "Jim" (hereinafter CI). CI agreed to speak with law enforcement agents, and provided the following information:

a. Less than two years ago CI met an individual in Washington named Tony LNU. CI was having financial problems and Tony LNU made an offer to CI for him to earn money by transporting marijuana. CI made two deliveries of marijuana in Washington state. One delivery was of approximately 56 lbs of marijuana and the other was of approximately 90 lbs of marijuana.

b. Approximately three weeks ago Tony LNU contacted CI and asked CI to deliver a shipment of marijuana from Iowa to Chicago. On approximately April 26, 2007, a semi truck delivered a semi trailer to CI and another person CI in rural Manchester, Iowa. CI and another person extracted approximately 600 lbs of marijuana from the trailer. CI and this individual packaged the marijuana in boxes that were color-coded according to the intended recipient, and contacted Tony LNU to let him know that CI was ready to travel to Chicago. Tony LNU then provided CI with the phone numbers for the people who were to receive the marijuana in the Chicago, Illinois area.

c. When CI was near Chicago, he called the phone number of the first recipient and was instructed by the first recipient which exit to take and where to go. CI was directed by the recipient to go to a parking lot and wait to be contacted. When the recipient arrived, CI turned over the vehicle containing the boxes of marijuana, and the recipient left in the vehicle. When the recipient brought the vehicle back, some of the marijuana had been removed. CI then contacted a second recipient, and repeated the same process. The meetings took place in public parking lots in Chicago, Illinois. CI returned to Iowa, and subsequently received payment for his services from Tony.

11. CI agreed to assist in a controlled delivery of the seized marijuana (or a sham substitute) to the intended recipients in Chicago, Illinois, as he was directed to do by Tony.

12. On May 18, 2007, CI accompanied by law enforcement officers conducted a controlled delivery of marijuana to DAVID ANTHONY DOWNING, AKA Henry. CI contacted DOWNING as they were entering Chicago, just as CI had done in April. CI met with DOWNING and allowed DOWNING to take the vehicle containing the marijuana. DOWNING took the vehicle to a residence at 1009 N. Kingsbury Street in Chicago, Illinois.

where DOWNING was observed by law enforcement officers unloading some of the marijuana into the garage. DOWNING then returned the vehicle to CI. There was still some marijuana in the vehicle CI was to deliver to others in the Chicago area. After DOWNING left the parking lot, CI received a telephone call from Tony informing CI that DOWNING had received blue color-coded boxes instead of the yellow color-coded boxes he was supposed to receive. DOWNING returned to the residence at 1009 N. Kingsbury Street in Chicago, Illinois. As he was leaving the residence, he was taken into custody.

13. Next, CI contacted the individual he knew as "Dex," subsequently identified as DANIEL FRANCIS BERGER. Daniel Francis Berger had received marijuana from CI during the April trip to Chicago, and had used the same procedures CI used with DOWNING. CI contacted DANIEL FRANCIS BERGER, and DANIEL FRANCIS BERGER met CI at a public parking lot. DANIEL FRANCIS BERGER took the truck from CI and drove it to an unknown location where DANIEL FRANCIS BERGER took his share of the marijuana. During the April delivery CI saw that DANIEL FRANCIS BERGER was accompanied by an AZAR BEREND NIEKAMP. On May 18, 2007, after contacting DANIEL FRANCIS BERGER through the telephone number given by Tony to CI, DANIEL FRANCIS BERGER and AZAR BEREND NIEKAMP arrived at the public parking lot to meet with CI. DANIEL FRANCIS BERGER drove the truck containing the marijuana out of the parking lot. AZAR BEREND NIEKAMP drove another vehicle. As officers followed DANIEL FRANCIS BERGER, they saw AZAR BEREND NIEKAMP and DANIEL FRANCIS BERGER driving down side streets and operating in a manner that appeared to be actions taken to attempt to determine if law enforcement officers were following them. After a period of time, DANIEL FRANCIS BERGER abruptly stopped the vehicle containing the marijuana and

attempted to flee on foot. Officers took DANIEL FRANCIS BERGER and AZAR BEREND NIEKAMP into custody. CI positively identified DANIEL FRANCIS BERGER and AZAR BEREND NIEKAMP as the individuals who had obtained marijuana from CI in April that was delivered at the direction of "Tony" LNU.

14. DAVID ANTHONY DOWNING is a Canadian citizen. AZAR BEREND NIEKAMP is a Canadian citizen, and DANIEL FRANCIS BERGER is a citizen of the United States.

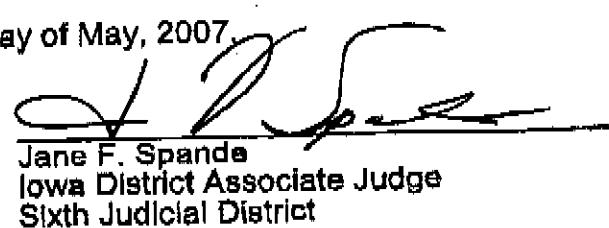
15. There is probable cause to believe that DAVID ANTHONY DOWNING, DANIEL FRANCIS BERGER and AZAR BEREND NIEKAMP have committed violations of federal law including conspiracy to smuggle goods into the United States in violation of Title 18, United States Code, Sections 371 and 545; conspiracy to import controlled substances, in violation of Title 21, United States Code, Sections 960 and 963 and conspiracy to distribute and possess with intent to distribute a controlled substance, in violation of Title 21, United States Code, Sections 841 and 846.

FURTHER AFFIANT SAYETH NOT.



Michael T. Vall  
Resident Agent in Charge  
U.S. Department of Homeland Security  
Immigration and Customs Enforcement

Subscribed and sworn to before me this 18<sup>th</sup> day of May, 2007



Jane F. Spande  
Iowa District Associate Judge  
Sixth Judicial District

## United States District Court, Northern District of Illinois

Name of Assigned Judge or Magistrate Judge	Martin C. Ashman	Sitting Judge if Other than Assigned Judge	
CASE NUMBER	07 CR 318 - 1	DATE	5/19/2007
CASE TITLE	USA vs. David Anthony Downing		

## DOCKET ENTRY TEXT

Removal proceedings held. Defendant appears in response to arrest on 5/19/2007. Defendant informed of his rights. Status hearing set for 5/21/2007 at 3:30 p.m.

Docketing to mail notices.

00:03

 07  
 CR  
 318  
 -1  
 USA  
 vs.  
 David  
 Anthony  
 Downing  
 5/19/2007

Courtroom Deputy Initials:	IS
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**U.S. DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS**  
**ATTORNEY APPEARANCE FORM**

NOTE: In order to appear before this Court an attorney must either be a member in good standing of this Court's general bar or be granted leave to appear *pro hac vice* as provided for by Local Rules 83.12 through 83.14.

In the Matter of  
United States v. David Downing

Case Number: 07 CR 318

AN APPEARANCE IS HEREBY FILED BY THE UNDERSIGNED AS ATTORNEY FOR:  
Defendant David Downing

REC'D JUN 25 2007

NAME (Type or print) Todd S. Pugh	
SIGNATURE (Use electronic signature if the appearance form is filed electronically) s/ Todd S. Pugh	
FIRM Thomas M. Breen & Associates	
STREET ADDRESS 53 W. Jackson Blvd, Suite 1460	
CITY/STATE/ZIP Chicago, IL 60606	
ID NUMBER (SEE ITEM 3 IN INSTRUCTIONS) 6243692	TELEPHONE NUMBER 312.360.1001
ARE YOU ACTING AS LEAD COUNSEL IN THIS CASE?    YES <input checked="" type="checkbox"/> NO <input type="checkbox"/>	
ARE YOU ACTING AS LOCAL COUNSEL IN THIS CASE?    YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>	
ARE YOU A MEMBER OF THIS COURT'S TRIAL BAR?    YES <input checked="" type="checkbox"/> NO <input type="checkbox"/>	
IF THIS CASE REACHES TRIAL, WILL YOU ACT AS THE TRIAL ATTORNEY?    YES <input checked="" type="checkbox"/> NO <input type="checkbox"/>	
IF THIS IS A CRIMINAL CASE, CHECK THE BOX BELOW THAT DESCRIBES YOUR STATUS.	
RETAINED COUNSEL <input checked="" type="checkbox"/>	APPOINTED COUNSEL <input type="checkbox"/>

## United States District Court, Northern District of Illinois

Name of Assigned Judge or Magistrate Judge	Martin C. Ashman	Sitting Judge if Other than Assigned Judge	
CASE NUMBER	07 CR 318 - 1	DATE	5/21/2007
CASE TITLE	USA vs. David Anthony Downing		

## DOCKET ENTRY TEXT

Status hearing held. Identity hearing, preliminary examination hearing and detention hearing set for 5/30/2007 at 3:30 p.m.

Docketing to mail notices.

00:02

2007 CR 318-1  
USA vs. David Anthony Downing  
U.S. District Court  
Northern District of Illinois  
Case 6:07-cr-02012-MWB-LTS

Courtroom Deputy Initials:	IS
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## United States District Court, Northern District of Illinois

Name of Assigned Judge or Magistrate Judge	Martin C. Ashman	Sitting Judge if Other than Assigned Judge	
CASE NUMBER	07 CR 318 - 1	DATE	5/30/2007
CASE TITLE	USA vs. David Anthony Downing		

## DOCKET ENTRY TEXT

Case called for identity hearing, preliminary examination hearing and detention hearing. Defendant waives identity hearing. Defendant waives his right to preliminary examination without prejudice. Defendant waives his right to a detention hearing without prejudice. Order defendant detained pending further court proceedings without prejudice. Order defendant removed to the United States District Court for the Northern District of Iowa in custody.

Docketing to mail notices.

00:01

Courtroom Deputy  
Initials:

IS